

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DAVID PETKO,**Plaintiff,****v.****WILLIAM RADLE, et al.,****Defendants.**

Civ. No. 11-1172

FILED

NOV 27 2013

MICHAEL E. KUNZ, Clerk
By _____ Dep. Clerk

ORDER

On February 11, 2013, Plaintiff David Petko filed a *pro se* Complaint alleging various constitutional violations by several state officials. (Doc. No. 1.) Attorney Gregg Kanter agreed to take Mr. Petko's case from the Prisoner Civil Rights Panel and filed a counseled three-count amended Complaint on April 19, 2012. (Doc. No. 13.) On July 30, 2013, I granted summary judgment on Counts I and III of the Complaint. (Doc. No. 41.) The Commonwealth advised Mr. Kanter that it had inadvertently failed to seek summary judgment on Count II, and that it planned to file a motion seeking judgment on that Count. (Doc. No. 43.) The Commonwealth also indicated that it would not seek costs from Petko if he did not oppose summary judgment on Count II. (R&R Exs. 1, 2.) The Commonwealth filed its Motion, which Mr. Kanter did not oppose. (Doc. Nos. 45, 51.) Mr. Petko then sent the Court a letter indicating that Mr. Kanter had acted without Mr. Petko's consent in failing to oppose summary judgment. (Doc. No. 53.)

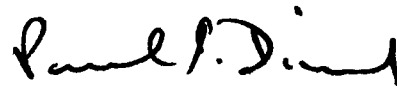
I referred the matter to the Honorable Timothy J. Rice, who conducted an evidentiary hearing on November 4, 2013, and issued a Report and Recommendation, recommending that I allow: (1) Kanter to withdraw; and (2) Mr. Petko to proceed *pro se* and contest summary judgment on Count II. (Doc. No. 58.) Although Mr. Petko's *pro se* objections to the Report and Recommendation are largely incomprehensible, he seems to argue that he did not want to

concede summary judgment as to Count II, and that I should remove Mr. Kanter and allow Mr. Petko to oppose summary judgment on Count II. (Doc. No. 60.) Because Mr. Petko does not actually object to the Report and Recommendation, but rather argues *in support* of its conclusions, I will overrule his objections as moot.

AND NOW, this 27th day of November, 2013, upon consideration of the issues presented in David Petko's October 29, 2013 Letter (Doc. No. 53), Mr. Kanter's Motion to Withdraw as Counsel (Doc. No. 57), and after review of the Report and Recommendation of United States Magistrate Judge Timothy R. Rice, it is hereby **ORDERED** that:

1. Mr. Petko's Objections (Doc. No. 60) are overruled.
2. The Report and Recommendation is **APPROVED** and **ADOPTED**.
3. Gregg Kanter's Motion to Withdraw (Doc. No. 57) is **GRANTED**.
4. Mr. Petko may proceed *pro se* in prosecuting the above-captioned action.
5. Mr. Petko is **ORDERED** to respond to the Commonwealth's Motion for Summary Judgment on Count II (Doc. No. 45) no later than **December 27, 2013**.
6. The Clerk shall place this case in the Civil Suspense File pending receipt of Mr. Petko's Response.

AND IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Paul S. Diamond", written over a horizontal line.

Paul S. Diamond, J.